

## Historical Chronology

Federal law is a reflection of Federal policy, and vice versa. We need to understand the history of Federal policy to understand the legal status of Indians and their attitudes toward the Government, self-governance, and other issues today.

The following chronology shows the milestones in Federal Indian policy. Notice how several major shifts in policy occurred over very short periods of time. It is not surprising, therefore, that American Indians today are cautious to embrace new Federal policies.

- **Early Period**
- **Indian Removal 1816-1846**
- **Reservation Period 1865-1890**
- **Assimilation Period**
- **Policy of Toleration**
- **Termination 1944-1958**
- **Self-Determination 1961 - Present**

### Early Period

When Europeans first sailed to America, the tribes were sovereign by nature. They conducted their own affairs and depended upon no other source of power to uphold their acts of government (Canby 1988). Colonial governments and later the federal government of the United States treated the Indigenous Nations as they did Foreign Nations and allowed them to regulate their own affairs. The young United States made treaties with hundreds of Indigenous American Nations, exchanging lands for payments and access rights (Cooper 1990, Canby 1988). Treaties are defined as legally binding contracts between parties that cannot be changed or cancelled without agreement by all parties. Indigenous Nations were recognized as separate, sovereign entities, and treaties established distinct boundaries between Indian and non-Indian territories. Within their territories, indigenous Americans governed their own internal matters. This is reflective of the general rule of international law that states that the internal laws of acquired territories continue in force (Wilkinson 1987 ). Indigenous American Nations were not conquered by the U.S. armed forces, as many believe. Rather, Indigenous lands were obtained through negotiation and contractual consent. The Northwest Ordinance of 1787 declared: "The utmost good faith shall always be observed towards Indians; their land and property shall never be taken from them without their consent" (Pevar 1992).

### Indian Removal 1816-1846

As time went on, however, the Europeans claimed dominion over all the territories of the future United States, and those claims seemed to limit the [sovereignty](#) of the Indigenous Nations living there (Canby 1988). As the United States grew in size and power, additional land was required for settlement and development. The U.S. government began a policy of Indian removal, which was in effect from 1816 to 1846. Through treaties and coercion the government actively, and sometimes forcibly, removed Indigenous peoples to areas west of the Mississippi River (Pevar 1992, Deloria 1985). As the growing population demanded still more land, and since the available land base was shrinking, removal was no longer an option. As a result, Indigenous Americans were moved onto reservations.

### **Reservation Period 1865-1890**

Reservations (Map of Reservations) were an attempt to bring the migratory lifestyles of Indigenous peoples in line with European ideas of agrarian land ownership. Reservations were again established when Indigenous Americans agreed (often under threat of force) to forfeit land in exchange for monetary payment or other goods and services (Wilkinson 1987). The reservation era lasted from roughly 1865 to 1890. After that, the reservations, too, came under pressure by settlers looking for land. The General Allotment Act, proposed by the Commissioner of Indian Affairs in 1853, was designed to undermine the reservation system by "weakening tribal power to control large blocks of land and allow as much white settlement of tribal lands as possible" (Deloria 1985, Cooper 1990, Pevar 1992). Indigenous Americans lost massive amounts of land during the allotment period, and reservations became a checkerboard of white and Indigenous American ownership.

### **Assimilation Period**

At the end of the treaty-making period in 1871, the United States Congress began a policy aimed at narrowing tribal and individual Indigenous rights and encouraging Indigenous Americans to move from reservations. Assimilation, allotment, and U.S. citizenship for Indigenous Americans became official policy goals and continued until the late 1920's (Deloria 1985, Cooper 1990, Pevar 1992).

### **Policy of Toleration**

For a short period from about 1930 to 1943, the U.S. government adopted a more tolerant attitude towards Indigenous Nations. The Indian Reorganization Act encouraged economic development and a revival of Indigenous community life and culture. This benevolence was short lived, however, and was replaced with a policy of termination.

### **Termination 1944-1958**

Termination was designed to produce rapid, forced assimilation. Under termination, the trust relationship between Indigenous Americans and the U.S. government would gradually decrease and eventually dissolve. Economic development on reservations was ignored, and Indigenous people were encouraged to seek a life off the reservation (Deloria 1985, Cooper 1990, Pevar 1992). The BIA assisted by training Indigenous people and moving them off the reservation to distant urban areas and then abandoning them (Ebbott 1975).

As part of termination, federal responsibilities were to be transferred to states. Several states had petitioned Congress to turn over Indigenous affairs to them because of major conflicts over water rights, hunting and fishing, and taxation. In response Congress passed Public Law 280 in 1953, that transferred certain criminal and civil jurisdiction over Indian lands to state government in California, Minnesota, Nebraska, Oregon, and Wisconsin (Cooper 1990). The consent of the Indigenous people affected was not necessary for these transfers, and Indigenous Americans were not allowed to negotiate the terms of the changes. While the policy of termination described above was abandoned in 1958, Congress did not pass a statute requiring the Indigenous peoples' consent to Public Law 280 until 1968 (Cooper 1990).

In response to Public Law, the Indigenous Nations turned to the federal courts for protection. In 1978, The Supreme Court held that Public Law 280 provided for only limited substitution of state authority and that it did not confer to states "general regulatory powers over Indian lands" (Wilkinson 1987). Additionally, Public Law 280 specifically exempted state jurisdiction over taxation of Indigenous trust property and any regulation of hunting, fishing, or trapping rights protected by treaty, statute, or agreement (Wilkinson 1990).

## **Self-Determination 1961 - Present**

From 1961 to the present, political and legislative policies toward Indigenous Americans have turned toward the general principle of self-determination (Cooper 1990). The premise of self-determination is that Indigenous Nations are basic governmental units and that Indigenous Nations possess certain sovereign powers to exercise government, enter into agreements, and develop and protect natural resources. The policy of self-determination is more in line with legal concepts and court decisions concerning Indigenous sovereignty and the general legal doctrine that Indigenous Nations are domestically dependent nations subject to the superior sovereignty of the U.S. (Deloria 1985, Cooper 1990, Pevar 1992). Self-determination has caused conflicts as tribes seek control of property rights, water rights, and fish and wildlife resources.

Source: <http://web.em.doe.gov/public/tribal/histchro.html>

